

CITY OF MOUNTAIN VIEW MEMORANDUM

DATE: October 29, 2002

TO: City Council

FROM: David A. Muela, Community Services Director

SUBJECT: OCTOBER 29, 2002 STUDY SESSION—PROSPECTIVE AMENDMENTS
TO HERITAGE TREE PROGRAM

RECOMMENDATION

Review the report on potential amendments to the Heritage Tree Ordinance and provide staff with final direction before calendaring the item for formal City Council review.

FISCAL IMPACT—None.

BACKGROUND AND ANALYSIS

The City Council last reviewed this matter in a study session on February 5, 2002. The Council considered a list of suggested study areas proposed by staff and the Urban Forestry Board and provided further direction to staff and to the Board in that regard. Staff presented that list of discussion and amendment items to the Urban Forestry Board on September 11, 2002 (Attachment 1, Urban Forestry Board staff report) and, as outlined in this report and after careful study and discussion, the Board made its recommendations to the Council. The session before the Board was well attended by members of the public.

PROPOSED AMENDMENTS

Proposed amendments to the ordinance (Attachment 2) fall into three categories:

1. Addressing Board and Council concerns;
2. Clarification of some existing provisions; and

3. Improved organization/layout of ordinance.

Criteria For Removal

- The current ordinance uses five criteria to evaluate Heritage tree removal requests. The revised ordinance would add two additional criteria and revise others.
- A new criterion has been added which focuses on the overall quality of the tree. This criterion addresses maturity; aesthetic qualities such as canopy, shape and structure; and visual impact on the neighborhood. [Section 32.32(a)(6)]
- A criterion regarding good forestry practices has been amended to include the planned removal of a tree nearing the end of its life and the replacement with young trees to enhance the health of the urban forest. [Section 32.32(a)(7)]
- The existing ordinance does not specify whether an applicant must meet one or more than one of the criteria for a removal to be authorized. An amendment will clarify that a removal request must be based on a minimum of one of the criteria, but that the decision-maker will consider additional criteria if applicable in weighing the decision to remove a Heritage tree.
- A new sentence has been added to Section 32.32(a) emphasizing the intent to preserve trees.
- Section 32.32(a)(2) regarding the grounds for removal has been revised in order to clarify economic or other enjoyment of the property. The term "enjoyment" is in essence the constitutional safeguard for when a tree should be allowed to be removed so that a person can enjoy the benefits the property shared by other property owners that are similarly situated. Based on concerns raised by the Urban Forestry Board, staff is proposing to revise the language.
- The Board recommended against including health concerns/allergies as criteria for the removal of Heritage trees. The Board agreed with the opinion of staff that the common law rule of necessity provides a recourse for exceptional problems and that inclusion of a health/allergy concern for removal could be subject to abuse and would otherwise be too problematic to implement.

Definition of Heritage Tree

- Amendment to definitions adding measurement standard for multi-branch trees was recommended by the Board.

Mitigation Standards

- Include new provision considering an arborist's estimate of the minimum value of the tree in establishing the monetary value of restitution for illegal removals.
- In the case of restitutions only, requirements stating that the minimum replacement tree must be a 24" box tree and the minimum in-lieu fee shall be the cost of two 24" box trees, delivered and installed. This same provision was not added in the case of mitigation imposed by conditions of approval and the reason for the difference is that restitution is for illegal removals and is intended to be stricter than a condition applied to a legal removal permit. However, the determination of the amount of in-lieu fee to be paid is still based on the minimum cost of one 24" box tree, delivered and installed.

Organization Changes

The current ordinance makes a distinction between development-related removals and nondevelopment-related removals. This change was made as an outgrowth of the initial approval of the Home Expo development on the former Emporium site. At the time that project was approved, the Urban Forestry Board had final approval authority over Heritage tree removals and, as a quirk of fate, when the Home Expo project came to the Council for action, the tree removals had already been approved. Council wanted that changed. Development-related removals under the current ordinance track with the underlying applicant's permit and, therefore, the development-related tree removals are not presented to the Urban Forestry Board, but rather to the Zoning Administrator and/or the City Council, as the case may be.

The proposed organizational changes retain the development versus nondevelopment-related approval process but also include separate processes for the City's capital improvement projects and for projects pursued by other public agencies. The key changes are as follows:

- Projects requiring only a building permit (i.e., swimming pool or kitchen addition) would now file for a permit with the Community Services Department rather than

the Zoning Administrator. The appeal will continue to be with the Urban Forestry Board.

- The time period for which a removal permit is valid has been lengthened from 180 days to two years (for both development and nondevelopment-related permits). Two years is the time period that planning permits are valid, so all time periods are now consistent. As with other permits, the length of time may be extended at the discretion of the Zoning Administrator or City Council. For nondevelopment-related and development-related approvals, whether for an individual building permit or a more complicated development, the tree removals cannot be implemented until a project building permit is secured, if applicable, and the project pursued.
- The process for nondevelopment permits requires that the decision regarding the removal request be posted on the tree after the decision is made. Because development-related removal permits are subjected to far more public noticing and participation prior to the initial determination, and because other aspects of the permit (i.e., the Conditional Use Permit or Planned Community Permit) are not posted, removals granted as part of the development project will not be posted individually after the decision. However, notice of the decision will be incorporated into the standard noticing of the accompanying permit. This is consistent with the current procedures.
- The existing informal process for removal of Heritage trees related to City-sponsored capital projects has been added to the ordinance. The process (described in Section 32.30) requires any project proposing removal of a Heritage tree to be reviewed by the City Arborist. The Arborist may recommend measures to mitigate any loss of a Heritage tree. These recommendations are then forwarded to the Board for their recommendation on the size, number and location of replacement trees, and the Board's recommendations are forwarded to the City Council for consideration during their review of the project.
- Similarly, the existing informal process for reviewing proposed improvement projects sponsored by other public agencies that will involve removal of any Heritage tree has been codified into the ordinance. Section 32.31 requires other public agencies to submit to the Community Services Director any environmental study done for the project, including any proposed mitigation measures for the loss of Heritage trees. The City will work cooperatively and informally with agency staff to ensure that any removal of Heritage trees is adequately mitigated.

Appeal Process

The process for both development and nondevelopment-related permits has been modified to require that a written appeal be filed with the City Clerk. The grounds must be stated in the appeal, and a fee is charged (currently set at \$15).

Penalties and Restitution

Currently, the ordinance provides for maximum criminal penalties under the City Charter and State law and provides the possibility for the City to secure restitution for the loss of value of the trees to the community. A provision has been added to act as a strong deterrent to illegal removals by providing that a person illegally removing a tree may be required to replant a large-size replacement tree or trees with the number, species, size and location of the tree(s) to be determined by the director or other hearing body, thereby eliminating the incentive to "chop the tree and pay the fine."

Other Changes

Removals required in emergencies (fire, storms, etc.) are spelled out in greater detail. Removals required consistent with State PUC Regulations or in conjunction with the maintenance of our landfill/golf course operation are also not subject to the removal process. Many less significant refinements have been included to incorporate the benefit of the City's experience with this program over the past years.

Prepared by:

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MDM-DAM/5/CAM
014-10-29-02M^

Attachments: 1. Urban Forestry Board Staff Report

2. Draft Heritage Tree Ordinance